

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK**

-----x

In re

**CASE NO.
23-40050**

ANTHONY BITETTO,

Debtor(s).

-----x

REPLY TO AFFIRMATION IN OPPOSITION

1. The Debtor's model 13 plan mortgage arrears are based on a statement sent to the Debtor from Planet Home Lending a/k/a Avail 1 LLC (the "**Mortgagee**") on December 16, 2022 showing the amount due by January 1, 2023 to be \$151,700.79 (see **Exhibit A**). Even if the actual arrears are \$37,729.14 more the Debtor can make up the additional \$628.82 per month in his chapter 13 plan.
2. The Debtor's last attempt at loss mitigation was not successful. The present case does not call for loss mitigation but instead the Debtor intends to pay his arrears through his model 13 plan. The mere fact that the Debtor was not successful in previous loss mitigation attempts does not bar the Debtor from getting an extension of the automatic stay.
3. Since the Mortgagee has not filed a proof of claim and does not have an exact amount of the claim in the Affirmation in Opposition it was not possible for the Debtor to account for said claim in the filed model 13 plan. Instead, the Debtor used the amounts given to the Debtor from the Mortgagee prior to filing the case. The Debtor also would like to review any filed claim filed by the Mortgagee to see why there is such a discrepancy between the most recent statement and the \$186,000 amount alleged in the opposition.
4. Attached to this Reply are copies of the Debtor's leasing agreements and an affidavit of contribution from the Debtor's son (**Exhibit B**). The amounts are higher than reflected in the initial schedules, so those will be amended shortly. It is anticipated that the Debtor's amended schedules will show approximately \$5000 in disposable income. In the Debtor's prior case he had approximately \$3,600 in disposable income.
5. The Debtor also informed me that he receives approximately \$350 to \$400 per month in tips from work. (**Exhibit E**)
6. It should be noted that the Debtor contracted COVID during his last case and was out of work for

about 3 months. This and his mental health were the reasons he was unable to meet the demands of chapter 13 in his last case.

7. Attached to this reply is a letter from the Debtor's psychologist. (**Exhibit C**)
8. Attached to this reply is evidence that the Debtor has paid \$7000 on January 24, 2023 to the Chapter 13 Trustee's TSF Bill pay site. (**Exhibit D**)
9. Attached to this reply is the Debtor's supplemental affidavit. (**Exhibit E**)

Dated: January 25, 2023

New York, New York

/s/ William Waldner
WILLIAM WALDNER, ESQ.
Attorney for Debtors
469 Seventh Avenue
Twelfth Floor
New York, NY 10018
212-244-2882
willwaldner@gmail.com

EXHIBIT A



321 Research Pkwy, Ste 303
Meriden, CT 06450
NMLS ID# 17022

003579

ANTHONY BITETTO
171 FIGUREA AVE
STATEN ISLAND, NY 10312

[REDACTED]

MORTGAGE LOAN STATEMENT

Statement Date: December 16, 2022

Property 171 FIGUREA AVENUE
Address: STATEN ISLAND, NY 10312

CUSTOMER SERVICE

Website: www.planethomelending.com

Customer Service: (866) 882-8187

Email: cs@myloansupport.com

PAYMENT AMOUNT

Loan Number:	3942
Next Payment Date:	01/01/2023
Payment Amount:	\$151,700.79

BANKRUPTCY MESSAGE

Our records show that either you are a debtor in bankruptcy or you discharged personal liability for your mortgage loan in bankruptcy.

We are sending this statement to you for informational and compliance purposes only. It is not an attempt to collect a debt against you.

If you want to stop receiving statements, write to us.

ACCOUNT INFORMATION

Loan Payment Date	06/01/2019
Principal Balance	\$374,118.62
2nd Principal Balance	\$0.00
Interest Rate	4.625%
Prepayment Penalty	No

EXPLANATION OF PAYMENT AMOUNT

Principal	\$1,284.43
Interest	\$1,246.10
Escrow (Taxes and Insurance)	\$855.73
Other	\$0.00
Other Reserves	\$0.00
Optional Products	\$0.00
Regular Monthly Payment	\$3,386.26
Total Fees and Charges	\$10,098.68
Past Unpaid Amount	\$141,306.62
Unapplied Balance	\$3,090.77
Total Payment Amount	\$151,700.79

TRANSACTION ACTIVITY (11/17/22 to 12/16/22)

Date Paid	Description	Principal	Interest	Escrow	Other	Fees and Charges	Total
11/29/22	Property Inspection	\$0.00	\$0.00	\$0.00	\$0.00	\$14.00	\$14.00
11/29/22	Property Inspection	\$0.00	\$0.00	\$0.00	\$0.00	\$14.00	\$14.00

PAST PAYMENTS BREAKDOWN

	Paid Last Month	Paid Year to Date
Principal	\$0.00	\$11,702.39
Interest	\$0.00	\$16,133.44
Escrow (Taxes and Insurance)	\$0.00	\$22,100.20
Other	\$0.00	\$0.00
Fees	\$0.00	\$0.00
Partial Payment (Unapplied)**	\$0.00	\$3,090.77
Total	\$0.00	\$53,026.80

Important Information About Partial Payments

**** Partial Payments:** Any partial payments that you make are not applied to your mortgage, but instead are held in a separate "unapplied" account. If you pay the balance of the partial payment, the funds will then be applied to your mortgage.

ACCOUNT HISTORY

Recent Account History

- * Payment Due 07/01/22 Unpaid Amount of \$3,386.26.
 - * Payment Due 08/01/22 Unpaid Amount of \$3,386.26.
 - * Payment Due 09/01/22 Unpaid Amount of \$3,386.26.
 - * Payment Due 10/01/22 Unpaid Amount of \$3,386.26.
 - * Payment Due 11/01/22 Unpaid Amount of \$3,386.26.
 - * Payment Due 12/01/22 Unpaid Amount of \$3,386.26.
- Current payment date 01/01/23: \$3,386.26.
Total: \$151,700.79 unpaid amount that, if paid, would bring your loan current.

If you are experiencing financial difficulty: See back for information about mortgage counseling assistance.

SEE REVERSE SIDE FOR IMPORTANT INFORMATION

Detach here and send this portion of the statement with your payment. Retain top portion for your records.

PAYMENT AMOUNT

Loan Number	3942
Borrower	ANTHONY BITETTO
Next Payment Date:	01/01/2023
Payment Amount:	\$151,700.79

Check this box if address form completed on the reverse.

Planet Home Lending, LLC

P.O. Box 69197

Baltimore, MD 21264-9197

[REDACTED]

Monthly Payment Amount \$

Additional Principal \$

Additional Escrow \$

Late Fees \$

Other**
(Please Specify) \$

TOTAL ENCLOSED \$

EXHIBIT B

LEASE

RENTAL AGREEMENT

CONTRACT

The Tenant(s) known as JOE DAHL, hereby agree to rent the dwelling located at (2ND FL) 171 FIGUREA AVE., STATEN ISL. NY 10312

The premises are to be occupied by the above named tenants only. Tenant may not sublet premises.

TERM The term shall commence on 2/1/2020 to 12/31/2024 at \$ 2,300 - per month payable on the 1st of each month in full.

LATE FEES In the event rent is not paid by the N/A day after due date, Tenant agrees to pay a late charge of \$ _____

UTILITIES Tenant shall be responsible for the payment of the following utilities: water, electric, gas, heating fuel, Telephone.

APPLIANCES Appliances provided in this rental are : stove, refrigerator, dishwasher, ✓ CENTRAL MICROWAVE, air conditioner(s),

Repairs will be borne by said Tenants if damage is due to negligence of Tenants.

SECURITY Amount of security deposit is \$ N/A. Security shall be held by Landlord until the time said Tenants have vacated the premises and Landlord has inspected it for damages. Tenant shall not have the right to apply Security Deposit in payment of any rent. Security deposits must be raised proportionately with rent increases.

INSURANCE Tenant is responsible for liability/fire insurance coverage on premises. Tenant agrees to obtain a "Renter's Insurance" policy and to provide Owner or agent with a copy of policy within seven (7) days of lease execution.

NOTICES Should tenant decide to vacate the premises, a 30 day written notice to the landlord is required. Should landlord decide to have tenants vacated, a 30 day written notice is required. Tenant agrees to allow premises to be shown at any and all reasonable times for re-rental. LEASE IS FOR 2/1/2020 → 12/31/2024

REAL ESTATE COMMISSION (If applicable) In the event a commission was earned by a real estate broker, Tenant shall not take possession of the premises unless all fees due broker are paid in full as agreed. Commission is payable when this lease is signed by the Tenant(s). It is solely for locating the rental for the Tenant and is not refundable under any circumstances regardless of any disputes or conditions between the Landlord and Tenant before or after occupancy is taken.

ACKNOWLEDGMENT Tenants hereby acknowledge that they have read, understand and agree to all parts of this document, and have received a copy.

RENT :	<u>AMOUNT RECEIVED</u>	<u>BALANCE DUE</u>
SECURITY:	<u>2,300 -</u>	<u>MONTHLY</u>
BROKER'S FEE:		

INCLUDES USE OF STORAGE SHED, SCREEN HOUSE + GAS BBQ

THE UNDERSIGNED TENANT(S) ACKNOWLEDGES RECEIPT OF A COPY HEREOF.

DATE: 2/1/2020 → 12/31/2024

OWNER/AGENT ANTHONY BISETTO TENANT JOSEPH DAHL

ADDRESS 171 FIGUREA AVE S/NY 10312 TENANT Dr R. Dl

PHONE _____ PHONE _____

LEASE

RENTAL AGREEMENT

CONTRACT

The Tenant(s) known as RICHARD GIUDICE, hereby agree to rent the dwelling located at 171 FIGUREA AVE, STATEN ISLAND, NY 10312

The premises are to be occupied by the above named tenants only. Tenant may not sublet premises.

TERM The term shall commence on 2/1/2020 and end on 12/31/2024, at \$ 1,900 per month payable on the 1st of each month in full.

LATE FEES In the event rent is not paid by the N/A day after due date, Tenant agrees to pay a late charge of \$ 5.

UTILITIES Tenant shall be responsible for the payment of the following utilities: water, electric, gas, heating fuel, Telephone.

APPLIANCES Appliances provided in this rental are : stove, refrigerator, dishwasher, air conditioner(s), MICROWAVE, PORT HEATER

Repairs will be borne by said Tenants if damage is due to negligence of Tenants.

SECURITY Amount of security deposit is \$ N/A. Security shall be held by Landlord until the time said Tenants have vacated the premises and Landlord has inspected it for damages. Tenant shall not have the right to apply Security Deposit in payment of any rent. Security deposits must be raised proportionately with rent increases.

INSURANCE Tenant is responsible for liability/fire insurance coverage on premises. Tenant agrees to obtain a "Renter's Insurance" policy and to provide Owner or agent with a copy of policy within seven (7) days of lease execution.

NOTICES Should tenant decide to vacate the premises, a 30 day written notice to the landlord is required. Should landlord decide to have tenants vacated, a 30 day written notice is required. Tenant agrees to allow premises to be shown at any and all reasonable times for re-rental. LEASE IS FOR 4 YEARS 2/1/2020 - AND 10 MONTHS 12/31/2024

REAL ESTATE COMMISSION (If applicable) In the event a commission was earned by a real estate broker, Tenant shall not take possession of the premises unless all fees due broker are paid in full as agreed. Commission is payable when this lease is signed by the Tenant(s). It is sole for locating the rental for the Tenant and is not refundable under any circumstances regardless of any disputes or conditions between the Landlord and Tenant before or after occupancy is taken.

ACKNOWLEDGMENT Tenants hereby acknowledge that they have read, understand and agree to all parts of this document, and have received a copy.

RENT :	AMOUNT RECEIVED	BALANCE DUE
SECURITY:	<u>\$1,900-</u>	<u>MONTHLY</u>
BROKER'S FEE:	<u>5</u>	<u>-</u>

INCLUDES USE OF BACK YARD, SCREEN HOUSE
BACK YARD PARKING SPOT AND GAS BBQ USE.

THE UNDERSIGNED TENANT(S) ACKNOWLEDGES RECEIPT OF A COPY HEREOF.

DATE: 2/1/2020 - 12/31/2024

2/1/2020

OWNER/AGENT

ADDRESS

PHONE

ANTHONY BITEFFO

171 FIGUREA AVE. NY

PHONE

TENANT

RICHARD GIUDICE

TENANT

Ronie

PHONE

LEASE

RENTAL AGREEMENT

CONTRACT

The Tenant(s) known as DAVID BUTERA, hereby agree to rent the dwelling located at 171 FIGUREA AVE, STATEN ISL., NY 10312.

The premises are to be occupied by the above named tenants only. Tenant may not sublet premises.

TERM The term shall commence on 1/1/2023 → 12/31/2024 at \$ 1,850 per month payable on the 13th of each month in full.

LATE FEES In the event rent is not paid by the N/A day after due date, Tenant agrees to pay a late charge of \$ _____.

UTILITIES Tenant shall be responsible for the payment of the following utilities: water, electric, gas, heating fuel, Telephone.

APPLIANCES Appliances provided in this rental are: stove, refrigerator, dishwasher, air conditioner(s), MICROWAVE, PORT. HEATER. Repairs will be borne by said Tenants if damage is due to negligence of Tenants.

SECURITY Amount of security deposit is \$ N/A. Security shall be held by Landlord until the time said Tenants have vacated the premises and Landlord has inspected it for damages. Tenant shall not have the right to apply Security Deposit in payment of any rent. Security deposits must be raised proportionately with rent increases.

INSURANCE Tenant is responsible for liability/fire insurance coverage on premises. Tenant agrees to obtain a "Renter's Insurance" policy and to provide Owner or agent with a copy of policy within seven (7) days of lease execution.

NOTICES Should tenant decide to vacate the premises, a 30 day written notice to the landlord is required. Should landlord decide to have tenants vacated, a 30 day written notice is required. Tenant agrees to allow premises to be shown at any and all reasonable times for re-rental. LEASE IS FOR 1/1/2023 - 12/31/24

REAL ESTATE COMMISSION (If applicable) In the event a commission was earned by a real estate broker, Tenant shall not take possession of the premises unless all fees due broker are paid in full as agreed. Commission is payable when this lease is signed by the Tenant(s). It is solely for locating the rental for the Tenant and is not refundable under any circumstances regardless of any disputes or conditions between the Landlord and Tenant before or after occupancy is taken.

ACKNOWLEDGMENT Tenants hereby acknowledge that they have read, understand and agree to all parts of this document, and have received a copy.

RENT :	AMOUNT RECEIVED <u>1,850</u>	BALANCE DUE <u>MONTHLY</u>
SECURITY:	<u>_____</u>	<u>_____</u>
BROKER'S FEE:	<u>_____</u>	<u>_____</u>
<u>\$18.50 - AS OF JAN. 2023 BASED ON OVER-NIGHT GUESTS ALLOWED ANYTIME</u>		

THE UNDERSIGNED TENANT(S) ACKNOWLEDGES RECEIPT OF A COPY HEREOF.

DATE: 1/1/2023 → 12/31/2024

OWNER/AGENT ANTHONY BUTERA TENANT David Butera

SIGN
ADDRESS 171 FIGUREA AVE 10312 TENANT DBmry

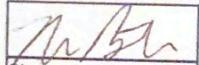
PHONE _____ PHONE _____

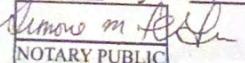
UNITED STATES BANKRUPTCY COURT	
EASTERN DISTRICT OF NEW YORK	
In re: <u>Anthony Angelo Bitetto</u>	
X Chapter 13	
Case No.: <u>1-23-40050</u>	
Debtor(s)	AFFIDAVIT OF CONTRIBUTION
X	

COUNTY OF Richmond
STATE OF New York

Nicholas Bitetto, being duly sworn, deposes and says that:

1. I am the Debtor's Son and live at the Debtor's house.
2. I work at Rolling Frito-Lay Sales LP in Franklin Park, NJ.
3. My gross monthly salary is approximately \$4,092.24, and my net monthly salary is approximately \$3,096.
4. Attached hereto is a copy of my recent pay stub.
5. I am committed to contribute \$1,800 per month towards the Debtor's Chapter 13 Plan.


Signature of Contributor

Sworn to me this
23 day of January, 2023

NOTARY PUBLIC



****DEBTOR(S) MUST ATTACH A COPY OF CONTRIBUTOR'S PAY STUB****

3:17



1 of 1



Rolling Frito-Lay Sales, LP
7701 Legacy Drive
Plano, TX 75024-0000

Cost Center	2503380416
Cost Center Desc	ZN-MCRTH NEW JERSEY ZONE
Department	30017019
Location	Fratnkin Park, NJ

Name : Bileto, Nicholas A.
Address : 171 Figuera Ave
Staten Island NY 10312
Personnel ID : 2503303416
Cost Center : 2503303416
Payroll Area : U1

Payroll Area Desc	: Weekly Sales
Payroll Period	: 01/01/2023 to 01/07/2023
Pay Date	: 01/06/2023

Tax Authority	Filing Status	Allowances	Advt Amt
FED	Ma. Sep	00	
NJ	Single	00	
NY	Single	00	

Check Date	Gross Wages	Taxes	Deductions	= Net Wages
Current 01/06/2023	1,023.06	209.70	39.21	774.15
Year to Date	1,023.06	209.70	39.21	774.15

Taxable Earnings Summary by Earning Code

	Amount
1007 Performance Base Pay	749.89
1498 Performance Pay Advance	273.17
Total Taxable Earnings Summary by Earning Code	
	1,023.06

Taxable Earnings

	Retro Period	Rate	Units	Hours	Amount	Current Period	Year to Date
1007 Performance Base Pay				40.00	749.89	40.00	749.89
1498 Performance Pay Advance						273.17	273.17
1498 Performance Pay Advance	12/18/2022 - 12/24/2022					273.17	
9088 Total Hrs Paid inc Hol	12/18/2022 - 12/24/2022			35.25			

Total Taxable Earnings	1,023.06	1,023.06
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Pre Tax Deductions	Retro Period	Current Amount	YTD Amount
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2021 Medical Pre-Tax		29.52	29.52
2023 Dental Pre-Tax		9.15	9.15
Total Pre Tax Deductions			
		38.67	38.67

Post Tax Deductions	Retro Period	Current Amount	YTD Amount
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2521 Adlt Emp Life		0.54	0.54
Total Post Tax Deductions			

Employee Tax Deductions	Retro Period	Current Period	Year to Date
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		Tax	Tax Gross
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Federal	Federal		
Withholding Tax		84.29	984.39
EE Social Security Tax		61.03	984.39
EE Medicare Tax		14.27	984.39

State	New Jersey		
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Withholding Tax		30.77	1,023.06	30.77	1,023.06
EE Unemployment Tax		3.91	1,023.06	3.91	1,023.06
EE Workforce Devlpmt T		0.43	1,023.06	0.43	1,023.06
EE Family Leave Insur		0.61	1,023.06	0.61	1,023.06
EE Health Insurance Ta			1,023.06		1,023.06
EE Disability Tax			1,023.06		1,023.06

State	New York		
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Withholding Tax		14.39	984.39	14.39	984.39
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Total Tax Deductions		209.70		209.70
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Check/Transfer Information				
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Bank Number	Bank Name	Account Number	Payment Method	Check/Direct Dep. No.	Amount
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021000021			Bank transfer		774.15
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EXHIBIT C

Linda Cloer Aspromonte, MS, CASAC

Clinical Director

Intervention Counseling

150 Adelaide ave.
SI, NY 10306
(718) 673 0226
laspromonte51@gmail.com

26th January 2023

To whom it may concern,

Anthony Bitetto is my client and I have been working with him for several months. When Anthony presented for treatment, he was suffering tremendous anxiety and crushing depression, due to an incredible amount of stress in his life. With the use of COGNITIVE THERAPY, Anthony has improved his ability to function efficiently in his life. He is dealing with all of life's challenges extremely well and his prognosis for continued success is excellent.

Linda Cloer Aspromonte, MS, CASAC

EXHIBIT D



America's Most Convenient Bank®

ANTHONY A BITETTO
171 FIGUREA AVE
STATEN ISLAND NY 10312

TD BANK, N.A.
929 HUGUENOT AVENUE
STATEN ISLAND, NY 10312
[Handwritten signature]

670 / TD Beyond Checking

549

Statement Beginning Balance		\$0.00
Plus 9	Deposits and Other Credits	\$10,650.02
Less 3	Checks and Other Debits	\$7,557.99
Statement Balance As Of: 01/25/2023		\$3,092.03

Transactions By Date

Date	Description	Debit	Credit	Balance
01/06/2023	ETRANSFER CR Transfer from IM		\$500.00	\$500.00
01/09/2023	DDA WITHDRAW TW04B534 4401 AMBOY I	\$100.00		\$400.00
01/11/2023	Online Xfer Transfer from CK		\$3,300.00	\$3,700.00
01/20/2023	ATM CASH DEPOSIT TW04B534 4401 AMBC		\$600.00	\$4,300.00
01/20/2023	ATM CASH DEPOSIT TW04B534 4401 AMBC		\$1,400.00	\$5,700.00
01/20/2023	Online Xfer Transfer from CK		\$1,500.00	\$7,200.00
01/23/2023	Online Xfer Transfer from CK		\$500.00	\$7,700.00
01/23/2023	ATM CASH DEPOSIT TW04B534 4401 AMBC		\$850.00	\$8,550.00
01/23/2023	DEPOSIT		\$2,000.00	\$10,550.00
01/24/2023	TFS 888-729-2413 TFS PAY	\$7,007.99		\$3,542.01
01/25/2023	Online Xfer Transfer to CK	\$450.00		\$3,092.01
01/25/2023	IOD INTEREST PAID		\$0.02	\$3,092.03

EXHIBIT E

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

In re

ANTHONY BITETTO,

Debtor(s).

CHAPTER 13

CASE NO.

SUPPLEMENTARY AFFIDAVIT

STATE OF NEW YORK)
)SS
COUNTY OF NEW YORK)

Anthony Bitetto, being duly sworn, deposes and says:

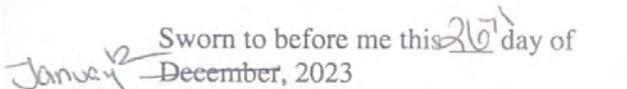
1. I am the debtor in the above-captioned Chapter 13 case and make this Affidavit in Support of the Motion Pursuant to 11 U.S.C. Section 362(c)(3) to continue the Automatic Stay for all creditors.
2. In the beginning of 2022, I contracted COVID. I became very sick and was not able go to work. After a few weeks I did recover but still had lingering effects that kept me out of work.
3. I did return to work on or about March 2022. Once I returned to work my boss agreed to assign me to drive smaller cars on shorter routes. I was driving a Chevy Tahoe for longer drives but was allowed to drive a Toyota Prius for shorter hauls. Since I am driving shorter drives, I now get cash tips. The tips average \$350 to \$400 per week. With the longer routes I only received a salary.
4. Because I was not working during that period, I was unable to keep up with both my mortgage and trustee payments. My case was dismissed.
5. Just this month one of my tenants has actually agreed to pay \$1850 per month so that his girlfriend can live with him aka overnight guests (**Exhibit B**). My total rental income is now \$6,050 per month.
6. Additionally, my son, has agreed to pay \$1800 per month to my chapter 13 case to make sure that we both have a place to live (**Exhibit B**).
7. I have already made payments of \$7000 to the trustee in my chapter 13 case through TSF Bill pay.

8. My son has also agreed to pay my life insurance policy, since he is the sole beneficiary, which is \$327 per month.
9. I respectfully request that the Automatic Stay of 11 U.S.C. Section 362 be continued as to all creditors for the duration of this case.
10. This case has been filed in good faith as I fully feel I am able to meet the demands of this case.

WHEREFORE, I, Anthony Bitetto, respectfully pray of an Order Pursuant to 11 U.S.C. Pursuant to 11 U.S.C. Section 362(c)(3) to continue the Automatic Stay in the instant Chapter 13 case, together with such other and further relief as to this Court may seem just and proper.


Anthony Bitetto

Dated: 1/26/2023


Sworn to before me this 26 day of
December, 2023

